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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1100 OF 2007

M/s. Meenakshi Bhavan ...Appellant.

Vs.

Employees' State Insurance Corporation. ...Respondent.

Mr. Shirish Naik with Mr. Shailesh More for the appellant.

Mr. H.V.Mehta for respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 17th September, 2007

P.C.

1. By order dated 27th February, 2007, after hearing both the parties, the Court had restored the application after considering the same on merit. The said proceedings, after restoration, is pending before the ESI Court at Mumbai. It means, the main issue about the contribution from February, 1988 by the applicant that itself is the subject matter which is under consideration.

2. As the basic application itself was rejected about the contribution, by order dated 15/04/2006, the ESI Court has granted the application of the respondent and ordered that applicant to pay the damages on

account of delayed payment for the said period as calculated by the Corporation.

3. Admittedly, the impugned order is dated 15/04/2006 and the restoration order is dated 27/02/2007. At this stage, I am of the view that unless the main case of contribution in question is decided finally, there is no question of asking for any damages on account of the delayed payment as ordered.

4. In view of the order dated 27/02/2007 of this Court, the order dated 15/04/2006 is unsustainable.

5. Keeping all points open, the impugned order dated 15/04/2006 is quashed and set aside with observation that the respondent Corporation after considering the contribution case, free to pass appropriate order of damages in accordance with law.

6. The impugned order dated 15/04/2007 is quashed and set aside. In view of this, the first appeal is allowed.

7. No costs.

(ANOOP V. MOHTA, J.)